

## Head 27A – Compensation

*Provide along the following lines:*

- (1) This Head applies when the Agency proposes to seek temporary access to lands, either by consent or by Court Order.
- (2) Any person with an interest in, or a right over land which the Agency seeks to temporarily acquire access to, shall be entitled to compensation from the Agency for any loss or costs sustained as a consequence of the Agency's planned intervention.
- (3) Compensation entitlements shall be considered with due regard to any impact of the works undertaken by the Agency which enhance the value of the land concerned and may be offset in whole or in part.
- (4) Compensation shall be payable to a public body only where the public body incurs a loss or costs as a result of the intervention.
- (5) The Agency will pay compensation to an owner or occupier who is entitled to compensation by instalment, based on its estimate of the duration of the resulting interference. Where the interference exceeds the period estimated by the Agency it shall make further payments on a pro rata basis.
- (6) Where the work to be carried out will result in a disturbance to the entitlement of the owner or occupier to peaceful enjoyment of the property for a period of less than 4 weeks, an offer of compensation will be included in the notice to the owner or occupier, as the case may be, under Head 27.
- (7) Where the work to be carried out is expected to result in a disturbance to the entitlement of the owner or occupier to peaceful enjoyment of the property for a period of not less than 4 weeks, the notice to the owner/occupier under Head 27 will include an invitation to engage with the Agency regarding the impact of the intervention on the owner/occupier in order to assess the appropriate level of compensation payable.
- (8) Compensation in relation to residential land shall not normally exceed the fair market rent for the property for the period of time that the Agency's temporary access is in place, and shall be proportionate to the effect of the interference on the occupier's enjoyment.
- (9) The Agency must consider compensation on the application of a person who has an interest in land other than ownership or occupation, but who may be negatively impacted by works conducted by or on behalf of the Agency. The person so affected shall make contact with the Agency to state the nature of

their legitimate interest. The Agency may make an offer of compensation based on its assessment of the nature of the interest and the extent of the interference on the person's peaceful enjoyment of said interest, and in proportion to the effect on the person's enjoyment of such interest.

- (10) A claim for compensation under subhead (9) shall be made not later than 6 months after the date of cessation of works on the lands in question.
- (11) The High Court may, where it considers that the interests of justice so require, extend the period within which a claim for compensation under this Part may be brought, upon application being made to it in that behalf.
- (12) Where a person, referred to in subhead 9 rejects the offer of compensation made to them by the Agency, they may make an application to the Circuit Court for a variation to the compensation offer. The Court, in considering such an application shall give due consideration to:
- (i) The offer of compensation made to the person by the Agency, and,
  - (ii) The basis for the amount of compensation offered to the person by the Agency.
  - (iii) The reasons given by the applicant for seeking a variation to the compensation offered.
- (13) Where a person with an interest in or a right to occupy land which is subject to proposed temporary access by the Agency, is carrying on a trade or business on the land, the compensation to which the person is entitled shall not exceed the loss or costs which they sustain by reason of the disturbance of the trade or business consequent upon them having to quit the land for the period of the temporary access by the Agency.

## Head 28A – Access to land for facilitation of exhumation works

*Provide along the following lines:*

- (1) This Head applies where an Agency has been assigned the function of exhuming remains from a particular site but it is not reasonably possible to commence or continue exhumation without accessing adjoining land.
- (2) Subject to this Head, an Agency may seek access to adjoining lands and make such arrangements or undertake such works as may be required for the purpose of facilitating the exhumation works at the site referenced in subhead (1).
- (3) For the purpose of accessing land under this Head and subject to the provisions of this Head, an Agency may: -
  - (a) by agreement or compulsorily, temporarily acquire any easement, wayleave, water-right or any other right whatsoever over or in respect of any land or water;
  - (b) by agreement or compulsorily, temporarily terminate, restrict or otherwise interfere with any easement, wayleave, water right or any other right whatsoever existing over or in respect of any land or water;
  - (c) by agreement or compulsorily, temporarily divert, close, remove or otherwise interfere with any private road, way or bridge or any canal or other artificial waterway or any artificial watercourse;
  - (d) by agreement or compulsorily, temporarily interfere with any land.
- (4) Where access to land is being sought under this Head, an Agency shall first serve notice on the owner and occupier of the lands it seeks to access in the manner set out in Head 27.
- (5) If, within one month after the service of the notice referred to in subhead (4), the owner and the occupier of such land(s) or building(s) give their consent to the proposed access in accordance with the notice given, either unconditionally or with conditions acceptable to the Agency, the Agency may proceed to access such land and conduct such works as may be necessary to facilitate the exhumation works in the manner stated in such notice.
- (6) Where, after a period of one month after being given notice, consent has not been given by both the owner and the occupier, an Agency may, subject to the provisions of this Head, seek an order from the relevant court granting access and all necessary rights to the lands in question for the period prescribed in the

order for the purpose of conducting such works as may be necessary to facilitate exhumation works at the site referenced in subhead (1).

- (7) Where an application is made under subhead (6) to access land, the circuit court shall have jurisdiction for all applications concerning land with a market value of less than €3m and the High Court shall have jurisdiction for all land valued in excess of €3m, save where the parties consent to proceedings remaining in the circuit court.
- (8) The relevant court shall not make an order under subhead (6) unless the court is satisfied that;-
  - (a) there is no other reasonably practicable means by which exhumation works might commence or proceed;
  - (b) the proposed interference is minimally intrusive and proportionate;
  - (c) having regard to the circumstances, appropriate compensation has been offered to the landowner, the occupier, or both, as the case may be;
  - (d) the access sought does not encroach on a dwelling; and
  - (e) any consequential health and safety concerns that may arise from such additional works, particularly for the owner and occupier of the lands being accessed, are also mitigated against.
- (9) When considering whether or not the criteria set out in subhead (8) have been met, and in particular when assessing the proportionality of an application to access lands under this Head, a court shall have regard to the following;
  - (a) the extent to which access to private lands will be required and the duration of any such proposed access; and
  - (b) the character of the interference with the property and the effect of such interference on the enjoyment and use of the property by the owner or the occupier, or both, as the case may be, or of such other persons as the court may consider relevant including members of the public.
- (10) An application brought before the relevant court under this Head to access lands in residential use, and any appeal of such a court's decision on such an application, may be heard otherwise than in public at the request of the owner or the occupier.